1 Background

The International Detention Coalition is a network of more than 150 organizations, academics, faith-based groups and individuals working around the world providing legal, social and other services, carrying out research and reporting, and doing advocacy and policy work on behalf of refugees, migrants, and asylum seekers, who have come together to network and share information on immigration detention in their countries and to promote greater respect for the human rights of detainees.

In September 2005, the IDC formalized a 3-year Steering Committee to provide a governance structure for the work of the IDC, which was coordinated by 2 volunteers and supported by the role of 13 regional representatives in 12 regions. In June 2008, a decision was made for the IDC to move towards becoming an incorporated organization with the capacity to receive funds and employ staff. Oxfam Australia undertook to support the IDC during this period of transition from a volunteer network to a funded not-for-profit organization. Pro-bono legal advice was sought in September 2008 and a Governance Working Group was formed, comprised of representatives from the Steering Committee, Oxfam Australia and the former IDC Coordinators, and the current IDC Director, aimed at working on the legal obligations required to become an incorporated body.

In February, 2009, the IDC statement of purpose and Constitution were completed, and forwarded to the Steering Committee, together with a list of 5 people interested in joining the Governance and Finance Committee, which will be presented in the March 2nd, 2009 IDC General Meeting for approval and adoption.

The list of potential G&F Committee members are:
- Anna Gallagher (Advisory Committee)
- Alice Nah (Asia Representative)
- James Thompson (Aust/Pacific Representative)
- Beth Eggleston (Oxfam Australia)
- Mary Latham (Treasurer)

2 New IDC Governance Structure

Given the changing nature of the IDC from a volunteer network to a formal incorporated organization, and the accompanying legal requirements in Australia under Victorian law for associations, a new IDC Governance structure has been developed which takes into account the small secretariat and limited resources to manage, while ensuring international and member representation. The proposed structure, below, will be reviewed after 18 months.

3 levels of governance:
1) International Advisory Committee (including regional representatives)
2) Governance and Finance Committee
3) Secretariat.

1 See Appendix 1 for IDC Steering/Advisory Committee list
2.1 An outline of the new IDC governance structure:

- **1) International Advisory Committee** (including regional representatives) – The existing Steering Committee to become the formal IDC advisory body with responsibilities to oversee strategic planning and core position of the IDC. The Committee would be made up of 18 internationally focused or individual members and 12 regional representatives, thus a total of 30 members and aim to meet once a year in Geneva for a Strategic Planning meeting.

- **2) Governance and Finance Committee** – The accountable Committee of five members to oversee governance and finance matters, such as staffing, budgetary, finance and reporting requirements. At least two Advisory Committee representatives would sit on the Governance and Finance Committee, with two members required by law to be Australian residents. A Governance and Finance Committee member would also be the chair of the Advisory Committee. The G & F Committee would meet each quarter and formally table, minute and approve reports by the Secretariat and oversee operational development.

- **3) Secretariat** - The role of Director, staff and volunteers to implement, develop and manage IDC operations and to provide executive support as needed.
3. IDC Roles and Responsibilities

3.1 IDC membership
The IDC has 3 levels of membership:
- Associate members
- Advisory Committee members
- Governance and Finance Committee members

3.2 Associate membership
Non-governmental organizations, universities, academics, research centres and individuals may become associate members of the International Detention Coalition. Country and regional associate members are approved by the Director and the regional representative, and international organisation associate members by the Director and one governance committee member, based on the following criteria:

- Agree with the mission, principles and values of the network, as defined in the document IDC Position on the Detention of Refugees, Asylum Seekers and Migrants (See Appendix 2);
- Agree to respect the diverse views and opinions within the membership and to look for respectful ways of communicating concerns and resolving disagreements and conflicts;
- Are involved in providing legal, social, pastoral and other services, carrying out research and reporting, and/or doing advocacy and policy work on behalf of refugees, asylum seekers and migrants subject to detention.
- Membership is not extended to political parties or to governmental individuals or institutions.
- Membership is currently free, however the possibility of IDC membership fees may be explored pending the organization’s financial position.

Associate members are not recorded as members under the register that Australian law requires incorporated associations to keep and thus do not vote in a general meeting. Associate members may nominate to join the Advisory Committee and become voting members (See 3.3.1). Associate members may also raise issues directly with the Regional Representative for their region. Associate members are not permitted to carry out activities or issues statements in the name of the IDC. Only Regional Representatives, the Advisory and Governance Committees and the Secretariat may represent the IDC publicly.

3.3 IDC International Advisory Committee
The International Advisory Committee, which replaces the previous Steering Committee, provides guidance and counsel on the development and implementation of the IDC Strategic Plan, with a focus on policy, advocacy and project priorities.

3.3.1 Committee membership
- The International Advisory Committee comprises of up to 30 members and is to be internationally and regionally represented; including 12 Regional Representatives and up to 18 broader international representational or individual members. Apart from individual members, Advisory Committee membership is organizational, namely committee members represent an organization- with changes of staff requiring the organization to nominate a replacement Committee representative.
- IDC associate members will be informed of Advisory Committee membership vacancies and can nominate by email to the Governance and Finance Committee who will approve membership based on the following criteria:
  1) Committee members must work on issues relating to the detention of refugees, asylum seekers and migrants;
  2) Committee members must have a demonstrated commitment to the aims, objectives and principles of the Coalition;
  3) Committee members must have an active engagement with at least one of the three areas of Coalition work – programs, advocacy and research.
4) Consideration will be given to the representational and strategic needs of the organization, including thematic focus and regional priorities.

3.3.2 Key responsibilities

- Provide advice and input on the creation of strategic plans for the Coalition, broad policies, major initiatives, press releases and selection of priority issues or countries upon which to focus.
- Assist the Secretariat in requests related to advice and guidance on related IDC work, including project initiatives, advocacy, policy and research work
- Participation in campaign appeals and actions as required
- Support with fundraising initiatives or in-kind support as required
- Representation of the Coalition at national and regional events and networks and promotion of the IDC through organizational networks
- Respond to Secretariat requests in a timely manner, and inform the Secretariat if they are to be unavailable for extended periods
- The Advisory Committee has voting rights in the AGM; see the IDC Constitution for details.

3.3.3 Meetings

- The International Advisory Committee will meet once a year in Geneva in an Annual Strategic Planning Meeting, which Committee and associate members can attend. Teleconference call-in for will be explored and made available where possible for Advisory Committee members unable to attend.
- The Annual Strategic Planning Meeting will be chaired by a member of the Governance and Finance Committee or delegated representative.
- At least 2 weeks prior to the meeting the Secretariat shall provide the Committee with a review of the previous year’s work and a draft Strategic Plan for the following year’s work which shall be presented at the meeting.
- Committee members will be encouraged to provide input into the Strategic Plan prior to the meeting
- The Strategic Planning Meeting will include opportunities for IDC members to outline priorities in their region to help shape strategic planning
- Additions and revisions to the Strategic Plan will be distributed to the Advisory Committee following the Strategic Planning Meeting for further review, and a finalized version tabled at the following Governance and Finance Committee Meeting for approval.

3.3.5 IDC Core Position

Since its formation in 2005, the IDC has developed its substantive shared mission and position on detention and its key strategic areas of focus, following extensive consultation with its members, including a questionnaire and involvement of regional representatives\(^2\). This core position, which was used as a part of the launch of the IDC in 2006, forms a part of the IDC Strategic Plan and has been listed in the IDC website, which members agree to as part of their application process.

Any changes to the core position of the IDC requires Advisory Committee consensus, which means unanimous agreement obtained by the Advisory Committee through either face-to-face meeting or email decision-making. A quorum of at least 20% of Committee members is required for any change of policy or position. Members shall be consulted on all draft changes by either the Director or the Regional Representative and thereafter an Advisory Committee decision can be made.

3.4 Regional Representatives

The IDC is divided into the following 6 regions and 12 sub-regions, with one regional representative per sub-region:

\(^2\) See Appendix 2- IDC Position on Detention of Refugees, Asylum Seekers and Migrants
1) Asia and the Pacific (Australia, New Zealand and the Pacific; Southeast and East Asia; South Asia)
2) Africa (Eastern and Western Africa; Southern Africa)
3) Europe and Central Asia (Western Europe; Eastern and Central Europe)
4) Americas (Central America and the Caribbean; South America)
5) Middle East and North Africa
6) North America (United States; Canada).

Regional Representatives shall be appointed for a 3-year period following approval by the Governance and Finance Committee, as per the Advisory Committee criteria 3.3.1, in addition to:

- Regional Representatives shall have extensive contacts in their region with groups and individuals working on detention issues.
- There will be one representative per region

3.4.1 Responsibilities

- In addition to the Advisory Committee responsibilities, Regional Representatives agree to assist the IDC Secretariat and Advisory Committee in a number of areas, including:
  1) The Regional Representative will together with the Director to approve membership from the region, with any concerns raised directly with the governance committee prior to the approval decision;
  2) Raise public awareness about the coalition and its mission and work in their region;
  3) Identify new members for the coalition in their region;
  4) Act as the contact point for receipt and dissemination of information from the coalition as required and from its regional members in communications relating to the work of the coalition;
  5) Work with its members in the regions to identify regional priorities relating to detention and work with the IDC Advisory Committee and Director to determine what work to do relating to those priorities;
  6) Assist the Director in implementing country or regional projects outlined in the IDC Strategic Plan
  7) Act as a member of the Advisory Committee of the Coalition.

3.5 IDC Governance and Finance (G&F) Committee

- With the IDC becoming an incorporated not-for-profit organization, the IDC aims to establish a G&F Committee to meet the organization’s legal, financial and governance requirements.
- The Governance and Finance Committee is an entity accountable to the IDC membership and will focus on establishing and maintaining the corporate governance of the IDC and has an operational focus on finance, funding, policy, appointment and reporting.

3.5.1 Responsibilities

- The Governance and Finance Committee is responsible for establishing and maintaining the corporate governance of the IDC.

Primary responsibilities include:

- Ensure that the project’s fiscal accountability is upheld
- Ensure Occupational Health and Safety and Human Resource processes and policies are in place.
- The Governance and Finance Committee shall be responsible for the appointment of the Director
- Oversee and evaluate the work of the Secretariat and provide support and direction to the Director as required.
- Participate in the evaluation of the IDC at the organizational and program levels as required.
• Meet each quarter and to chair an Annual Meeting. See the IDC Constitution for further details on meetings and membership.
• Review, minute and approve the reports and make decisions relating to budget, Director work-plan and governance matters.
• Approve the Annual Report and Financial Statement.
• Assist the Secretariat as required with financial, fundraising and other operational requests.
• Review all IDC financial records at least once every quarter, and assist the Secretariat in the event of annual auditing and the preparation of financial reports.
• The G&F Committee Chair agrees to commit a minimum of 1-2 days per month to the work of the IDC.
• Members are to be available to respond to the Secretariat and to local accountability requirements.
• Member attendance of the assigned quarterly meetings is a requirement for the role.
• G&F Committee members do not make decisions on IDC policy, positions or strategic planning but aim to uphold and ensure the implementation of the Strategic Plan.
• G&F Committee will be accountable to the IDC membership by being required to report annually to IDC members on these matters.
• A G& F Committee representative will be appointed to chair the Annual Strategic Planning meeting held in Geneva each year.

3.6 Secretariat – Director’s role

• The Secretariat of the IDC is made up of the Director and any additional IDC staff, interns and volunteers.
• The Director is responsible for the development and implementation of the IDC work-plan, the management of IDC operational responsibilities and for providing support to the executive as required, including working together with the Regional Representatives and consultation with members to prepare all material for the Advisory and G&F Committees.
• The Director shall be accountable to the Governance and Finance Committee and provide reports to the Committee every quarter or as directed.
• The Secretariat will table a report at each meeting, including: 1) Update on implementation of work-plan 2) Financial report 3) Additional governance matters.
• The Director agrees to work within the set IDC Position, Budget, Strategic and Operational Plans and to represent the broader IDC constituency as determined by the IDC Mission Statement.
• More details on the role of the Director can be found in the current position description.
Appendix 1

International Coalition on the Detention of Refugees, Asylum Seekers and Migrants

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IDC Regional Representatives
• 1) Asia and the Pacific (Australia, New Zealand and the Pacific; Southeast and East Asia; South Asia)
• 2) Africa (Eastern and Western Africa; Southern Africa)
• 3) Europe and Central Asia (Western Europe; Eastern and Central Europe)
• 4) Americas (Central America and the Caribbean; South America)
• 5) Middle East and North Africa
• 6) North America (United States; Canada).

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February 17, 2009
INTERNATIONAL DETENTION COALITION
POSITION ON
DETENTION OF REFUGEES, ASYLUM SEEKERS AND MIGRANTS

1. In many countries immigration detainees get less judicial oversight of their cases than criminal detainees. Everyone held in immigration-related detention should have regular judicial oversight of their detention and should be provided with an effective opportunity to challenge the lawfulness of the decision to detain.

2. Alternative non-custodial measures, such as reporting requirements, should always be considered before resorting to detention.

3. People should not be detained just because they have sought asylum/refuge in a country or because circumstances compelled them to enter without proper documents.

4. In many countries immigration detention is of unlimited length. Detention should be for the shortest possible time. There must be limits on the length of detention.

5. Children should not be detained.

6. There should be regular independent monitoring of the conditions in places of detention. We urge states to ratify the Optional Protocol to the UN Convention against Torture, which will provide a strong legal base for a regular and independent monitoring of places of detention.

7. Governments that host refugees in closed refugee camps should promote freedom of movement and self-reliance instead.

8. The responsibility for refugee protection needs to be shared more equitably, including the provision of additional humanitarian and development assistance for refugee-hosting areas, encouraging host governments to permit more freedom of movement and opportunities for self-sufficiency for refugees.

What is administrative detention?
Detention is defined as restriction on freedom of movement by governmental authorities. There are two types of detention: criminal and administrative.

Administrative detention in the migration related context is used by governments to implement an administrative measure, such as to prevent illegal entry or to remove non-citizens from their countries, typically with little or no judicial oversight.

UNHCR (the UN refugee agency) defines detention as: “Confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities, or airport transit zones, where freedom of movement is substantially curtailed, and the only opportunity to leave this limited area is to leave the territory.”

Unlike criminal detention, administrative detainees are not being detained because they have been charged with, or convicted of, a criminal offence.

Who is detained and where?
Most governments detain refugees, asylum seekers and migrants in some or more of the following situations:
• upon entry to the country;
• pending a final decision in their applications for asylum or other requests to remain in the country;
• pending their final removal when they are no longer permitted to remain in the country.
Men, women and children, the elderly and disabled – the great majority of whom have committed no crime – are held against their will in removal centres, immigration detention centres, jails, prisons, police stations, airports, hotels, ships and containers pending a final decision in their cases or pending a removal from the country that may take months or years to effect due to bureaucratic problems.

Several governments around the world host large refugee populations and often place significant limits on movement of the resident refugees. For example, in many countries refugees must obtain a permit to leave a camp; they can only travel a certain distance and for a certain time period outside of the camp; and, if they fail to comply with the terms of the permit, they risk arrest and imprisonment, sometimes for years, despite the fact that they are refugees. They may be required to live in these camps without the right to move for years. In fact, some children and grandchildren are born in these camps without ever having the right to leave them.

Refugees, forced to flee from countries where they initially sought safety, are often jailed, sometimes indefinitely, in the new country of “refuge” for so-called “irregular secondary movement”.

**How many refugees, asylum seekers and migrants are detained for migration related reasons around the world?**

It is almost impossible to say. Most governments do not provide easily accessible, public information on the number of migration related detainees. The UK, Australia and the United States do maintain public statistics. For example, the United States detained over 230,000 non-US citizens for migration related reasons this past year and on any given day, there are over 20,000 people in US immigration detention centres, jails and prisons pending a final decision in their immigration/asylum cases, including preparations for removal. In 2004, the US government passed legislation which included authorization for the construction of up to 40,000 additional immigration detention bed spaces.

And hundreds of thousands of refugees are held in closed refugee camps, e.g. in Nepal, Tanzania, Thailand, and Zambia with limited or no freedom of movement.

**What are the conditions of detention?**

Unfortunately, conditions of detention in most countries fall below international human rights standards. In fact, administrative detainees around the world often receive less protection, both relating to the procedures governing their detention and the conditions of detention, than persons pending criminal trial or those who have been convicted of a crime. For example, access to legal counsel is sporadic or non-existent in many places. Administrative detainees often do not receive information in a language and a manner that they can understand on the reasons for their detention and their rights while detained. Most are kept in overcrowded, unhygienic conditions, sometimes with convicted criminals. In many countries, children are detained without being provided an opportunity to go to school. Men and women are sometimes held in the same facilities while, conversely, families may be split and held in separate facilities.

The conditions in most closed refugee camps are of serious concern. Being held in a closed refugee camp means that the refugees living there are unable to be self-sufficient. They are totally dependent on supplies provided by the international community, which are frequently subject to shortages and cuts. A quote from a Burundian refugee couple in Tanzania sums up the situation:

“They expect us to eat boiled beans and ugali (maize bread) every day, sometimes without even salt. Could you do that for 12 years? Things are becoming unbearable. The camp is insecure. Children die from malaria. And the rations go up and down, but we are the last to know. Maybe we must leave the camp, and go back to Burundi”.

Tanzanian law and policy prohibits refugees in these camps from working, undertaking any business activities or being more than 4 km away from the camps. It is essentially impossible for a refugee to abide by these laws. Not provided with enough food or with firewood to cook
their rations, they must risk arrest, police abuse, assault and even rape as punishment for simply leaving the camps to earn money to buy food, or to collect firewood.

**How long are refugees, asylum seekers and migrants held in administrative detention?**
The length of time varies among countries, with one of the lowest periods in France (32 days) to unlimited periods of time under certain circumstances in countries such as the United States, the United Kingdom, Australia and Zambia. There are many cases around the world where persons have been administratively detained for years. For example, in Australia, a Kashmiri national whose asylum claim was rejected was held in administrative detention for seven years. He was considered to be stateless because no country would accept him as their national. In August 2004, the High Court of Australia ruled that under Australia’s mandatory detention legislation it is permissible to detain such a person for the rest of his or her life. Indefinite detention of asylum seekers is permitted in the United States and it is not unusual for them to be detained for two or more years pending a final decision in their cases.

Many refugees have been living in closed camps for extended periods. Today, there are at least 33 so-called “protracted refugee situations” involving groups of 25,000 people or more who have been in exile for over five years. According to UNHCR data, they account for 5.7 million of the world’s 9.2 million refugees. Those figures do not include the world’s oldest and largest protracted refugee situation, Palestinian refugees, and many others who fall outside the UNHCR mandate. Many refugees have lived their whole lives in closed camps.

**Does detention have an effect on the ability of refugees to seek protection?**
Refugee rights advocates around the world fear that measures which governments have taken to restrict access to asylum, including the increase in the use of detention – especially after September 11, 2001 – have been a principal reason for the decrease in the number of requests for refugee status. Since 2001, the number of asylum applications in industrialized countries has dropped by 40%. We fear that this means that there are many people who need protection from serious human rights abuses who are unable to gain access to it or who become undocumented migrants in countries of potential asylum thereby surviving without protection and access to basic services. Also, detention makes it more difficult for asylum seekers to have access to information to prepare their cases properly and to consult with lawyers.

Many refugees face serious protection problems within closed refugee camps. They may have fled persecution in their country of origin and then be forced into living in danger of ongoing persecution (sometimes by other groups or individuals from their country of origin) inside a refugee camp. These protection problems often lead refugees to flee for a second time – and to risk of arrest and imprisonment in the next country to which they flee, as so-called “irregular secondary movers”. Worse, poor conditions may force many to return to their home countries before it is safe to do so. This constitutes constructive *refoulement*, i.e., indirectly, but effectively, forcing refugees back to their persecutors.

**Don’t governments have the right to protect their national sovereignty and to detain people who arrive in their countries without permission?**
Under international law governments do have the right to protect their national sovereignty. But also enshrined in international law is the right to seek and enjoy asylum. And international laws protect against arbitrary and unlawful detention.

Governments do have a right to detain non-citizens for migration related reasons in certain limited circumstances (for initial identification and for legitimate removal purposes), but only if the detention complies with international and regional human rights standards relating to restriction of movement.

Refugees, asylum seekers and migrants cannot be subject to arbitrary detention. Mandatory detention of all persons arriving at a country’s borders – as is practiced, for example, in Malta and in the Canary Islands in Spain – can be considered to be arbitrary and violates international law standards. While there is no definition of “arbitrary detention” in international law, the United Nations Working Group on Arbitrary Detention (WGAD) has defined it as detention which is contrary to the human rights provisions of the major international human
rights instruments. Arbitrary detention occurs where there is no legal basis for the deprivation of liberty or where a person is deprived of their liberty because they have exercised rights and freedoms guaranteed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Where countries automatically detain all persons – regardless of their status as asylum seekers or economic migrants – they can be considered to be practicing arbitrary detention in violation of international law. States cannot detain persons simply because they are seeking asylum. For example, countries such as Malta or Spain – in the case of the Canary Islands – automatically detain all persons arriving on their shores regardless of whether they are fleeing persecution or looking for work. Malta and Spain have been criticized for their practice of mandatory detention of all arrivals.

The Geneva Convention relating to the Status of Refugees (art. 31) prohibits governments from penalizing refugees and asylum seekers for their illegal entry into a country. We believe that detention is being used as a form of penalization. Many persons fleeing persecution have no choice other than to cross borders without authorization in order to flee human rights abuses and save their lives. The Geneva Convention recognizes this.

The Geneva Convention (art. 26) also states that “each Contracting state shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.”

**What is the cost of detention?**

Apart from the extremely negative human costs (psychological, physical and social) of detention, it is very expensive in financial terms. Alternatives to detention are much more cost-effective.

With regard to encamped refugees, keeping refugees in closed camps has economic implications for both the refugees and host communities, because refugees could be self-sufficient and contributing to the local economies. Refugees who have been de-skilled by effective “warehousing” policies lose their economic capacity at great expense to their current and future human potential. This cost is borne by the country of asylum if they are unable to return to their country of origin or to be resettled in a third country. Years of enforced idleness also undermine their ability to successfully re-integrate in their home countries, should conditions improve, or to integrate in countries of resettlement.

**What is the International Coalition on Detention of Refugees, Asylum Seekers and Migrants?**

The International Coalition on Detention of Refugees, Asylum Seekers and Migrants is a recently formed coalition of over 100 non-governmental groups and individuals working around the world providing legal, social and other services, carrying out research and reporting, and doing advocacy and policy work on behalf of refugees, migrants, and asylum seekers, who have come together to network and share information on detention in their countries and to promote greater respect for the human rights of detainees.

**What is the coalition’s position on administrative detention and what are its aims?**

The International Detention Coalition believes that detention of refugees, asylum seekers and migrants should be avoided. Alternatives such as supervised release, regular reporting requirements or posting bail, should be considered and pursued before detention.

A person should only be deprived of his/her liberty if this is in accordance with a procedure prescribed by law and if after a careful examination of the necessity and proportionality of deprivation of liberty in each individual case, the authorities have concluded that resorting to non-custodial measures (alternatives to detention) would not be sufficient.

Where detention is considered to be absolutely necessary and authorized under international, regional and national standards, governments should ensure that it is used only for initial identification of persons or for legitimate removal purposes and only as a last resort.
Any decision to detain must be subject to regular judicial review and the time period must be reasonable.

Refugees, asylum seekers and migrants must not be subject to indefinite detention.

Conditions of detention must comply with human rights standards, and there must be regular independent monitoring of places of detention. The Coalition urges states to ratify the Optional Protocol to the UN Convention against Torture (OPCAT), which will provide a strong legal base for a regular and independent monitoring of places of detention. OPCAT will enter into force on 22nd June 2006.

Certain groups – such as pregnant or lactating women, children, survivors of torture and trauma, elderly persons or the disabled – should not be placed in detention.

Governments that host refugees in closed refugee camps should move from policies of encampment towards policies that allow refugees to become self-reliant. Industrialised countries should provide additional humanitarian and development assistance for refugee-hosting areas in developing countries, encouraging host governments to permit more freedom of movement for refugees.

Consistent with the coalition’s position on detention, the specific aims of the coalition are:

• to prevent and/or limit the use of detention of asylum seekers, refugees and migrants;
• to advocate for alternatives to detention, and for the use of the least restrictive forms of detention;
• to promote greater protection of and respect for the human rights of those held in detention; and,
• to promote the development and adoption of best practices in the use of detention.